GENERAL ORDERS

OF THE

COURT OF CHANCERY,

OF THE

10TH OF JANUARY, 1879.

WITH

Notes and Forms of Proceedings.

BY

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(Registrar of the Court.)

Toronto:
ROWSELL AND HUTCHISON

TABLE OF CASES.

ORDERS

OF THE

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638. Any adult person entitled to apply, under Orders 467 or 471, for an administration order may apply to the Master in the County Town of the County (other than the County of York) where the deceased person whose estate it is desired to administer resided at the time of his death; and such Master may, on 14 days' notice being given to the person or persons entitled under the present practice to notice of such an application, make an order for the administration of, and proceed to administer, such estate in the least expensive and most expeditious manner.

This order is confined to applications made by adult persons; where an administration of an estate is sought on behalf of an infant, or where the person whose estate is to be administered died in the County of York or in any County where there is no local Master—the application must be made in Chambers, or, when necessary, upon bill filed for that purpose. When the application is made by persons claiming as creditors, or as specific, pecuniary or residuary legatees or next of kin, notice must be served on the personal representative of the deceased person whose estate is sought to be administered; and where an administration of the

realty is required, unless the applicant himself be entitled to some interest therein, some one or more of the heirs or devisees interested therein must be served with notice of the application *(Order 472).*

Order 467 has been held to apply to simple cases only, and where executors were charged with misconduct, it was held that a bill must be filed *(see Taylor's Orders, p. 339.—Eberts v. Eberts, 25 Gr. 565)* and the same rule it is apprehended would be adopted in the construction of *Order 638.* But when a plaintiff files a bill for administration, instead of applying for a decree on notice, he is not entitled to the extra costs thereby occasioned *(Sovereign v. Sovereign, 15 Gr., 559, and see Eberts v. Eberts, supra).*

Where an executor in answer to an application for administration swore that the personal estate had not exceeded $50, the Court, before it would make an order for administration, required the applicant to file an affidavit stating that he had reason to believe and did believe that the result of the proceedings would show a substantial balance of personal estate to be divided among the legatees *(Foster v. Foster, 19 Gr., 463).*

Administration was refused on the application of a legatee whose claim, including interest on his legacy, only amounted to $28, notwithstanding that it was alleged that other legacies remained unpaid which amounted to a considerable amount *(Reynolds v. Coppin, 19 Gr., 627).*

And where a creditor brings an administration suit after being informed that there are no assets applicable to the payment of his claim, if the information appear by the result to be substantially correct, he may have to pay the costs of the suit *(The City Bank v. Scatcherd, 18 Gr., 185).*

There appears to be some conflict of authority as to whether a deficiency of assets for the payment of debts, is a sufficient ground for the personal representative to apply to the Court for administration *(see Swetnam v. Swetnam, 6 Pr.R., 149, Re Ette, 6 Pr.R., 159, Re Shipman, Wallace v. Shipman, 24 Gr. 177; Marsh v. Marsh 7 Pr. R., 129; Re Jack, Jack v. Jack, 13 C.L.J., 358; Re Bromley, before Blake V.C., 28 January, 1878).* In the latter case it appeared that the assets were insufficient, that the applicant had been sued by one

creditor in the Division Court, and that another creditor had written urging the applicant to obtain an administration order, and the application was granted. But it seems clear that an executor has no right to institute a suit for administration merely to obtain an indemnity by passing his accounts (*White v. Cummins, 3 Gr., 602; Cole v. Glover, 16 Gr., 392; Barry v. Barry, 19 Gr., 458*), and he may be refused his costs of a suit unnecessarily brought (*Graham v. Robson, 17 Gr., 318*), or he may be ordered to pay the costs of a suit which turns out to be improperly instituted (*McGill v. Courtice, 17 Gr., 271; Sullivan v. Sullivan, 16 Gr., 94*); and where the guardian *ad litem* of an infant defendant had made no objection to the unnecessary proceedings, no costs were given either to the executors or the guardian of such proceedings (*Springer v. Clark, 15 Gr., 664*). So also executors have been charged with so much of the costs of a reference as were incurred in establishing charges against them which they disputed (*Stewart v. Fletcher, 18 Gr., 21*).

Where the personal representative makes application for the administration of the personal estate, the application may be granted *ex parte* (*per Esten V. C., Re Dunlevy, see Order Book 11, fo. 778; Re Ette, 6 Pr.R. 159; Re Bromley, supra*).

Where there is more than one personal representative all must be notified, notwithstanding that one of them be resident out of the jurisdiction (*Freeborn v. Carroll, 6 Pr. R., 188*). A decree for administration cannot be made against an executor *de son tort* where there is no legal personal representative before the Court (*Rowsell v. Morris, L.R. 17, Eq. 20; Outram v. Wyckhoff, 6 Pr. R., 150*). A creditor making application must be a creditor of the deceased person and not merely a creditor of his executor or administrator, thus an application by a person who had made advances to the executor was refused (*Campbell v. Bell, 16 Gr. 115; Farhall v. Farhall, L.R. 7 Chy. 123; Re Pettee, McKinley v. Beadle, 6 Pr. R. 157*).

A legatee, or next of kin, cannot apply for administration until the expiration of a year from the death of the person whose estate is sought to be administered (*Slater v. Slater, 3 Ch. R. 1; Vivian v. Westbrooke, 19 Gr. 461*).

When the estate in question is small, a suit for administration should not be brought until all reasonable means of avoiding the

suit have been exhausted; and where a next friend of an infant brought a suit for administration, without having taken steps to avoid litigation, and the suit afterwards appeared to have been unnecessary, he was ordered to pay the costs of the suit *(Hutchinson v. Sargent, 17 Gr., 8; McAndrew v. Laflamme, 19 Gr., 193).*

In simple cases where all parties interested are represented before the Master it would be possible, under this and the following order, for the Master to defer making any report until the accounts were taken and the estate realized, and then by one general report to wind up all matters connected with the estate, and this course will no doubt be pursued wherever practicable.

The practice in administration suits is governed largely by *Orders 211-257, 470-487, 584-9.* Wherever, however, the provisions of any of the Consolidated General Orders conflict with these orders they are abrogated by *Order 651.*

Under *Order 470* the Master would have power to give any special directions he might think proper respecting the carriage of the order, where there are conflicting claims, and also to transfer its carriage from one party to another, if occasion should require. The rule being to give the conduct of the proceedings, *ceteris paribus,* to the party most interested in prosecuting them properly and economically *(Perrin v. Perrin, 3 Ch. R. 452; and see Re Adams, Adams v. Muirhead, 6 Pr. R. 283, Taylor's Orders 340.)*

It would seem proper that orders pronounced by a Master under *Orders 638, 639* and *640* should follow the phraseology heretofore adopted in præcipe decrees, and should not be drawn in the first person.

639. Such Master shall have full power to deal with both the realty and personalty of the estate, the subject of administration, and shall dispose of the costs of the proceedings, and shall finally wind up all matters connected with such estate, without any further directions, and without any separate, interim, or interlocutory, reports, or orders, except where the special circumstances of the case absolutely call therefor; and in so doing he shall be

guided by the practice heretofore had in the administration of estates upon an application made in Chambers for an administration order. Provided always, that all moneys realized from the estate shall at once be paid into Court, and that no moneys shall be distributed or paid out for costs or otherwise, without an order of the Judge in Chambers or the Court, and on the application for such order, the Judge may review, amend, or refer back to the Master his report or order, or make such other order as he deems proper.

The object of this order is to do away with the necessity of a hearing on further directions in administration suits; the order to be made by the Master ought therefore to cover all those directions which, by the former practice, were usually made on the hearing on further directions, except the order for payment of the fund out of Court; *e. g.*, the Master may properly order any balances found in the hands of accounting parties to be paid into Court, he may also properly direct a sale of the land, the payment of the purchase money into Court, the settlement of conveyances and the execution thereof by all proper parties, and he may also properly appoint some person to execute such conveyances for infants or other persons not *sui juris* who are incapable of executing the same themselves. The Master has also power to make any order or report which may be necessary for completely winding up the estate or protecting the rights of the parties to the suit; for example, if it should become necessary to appoint a receiver or to grant an injunction, it would seem that it is intended that the Master shall have power to make the necessary order therefor. The words "without any separate or interlocutory reports, or orders, except so far as the special circumstances of the case may require," indicate that it is only unnecessary orders or reports that are dispensed with, but that so far as such interlocutory reports or orders may be essential to the winding up of the estate, the Master is to have power to make them. The drawing up and issuing of many orders may be avoided by acting under *Order 231*, which provides that a party directed by the Master to bring in any account, or do any other act, is to be held bound to

do the same in pursuance of the direction of the Master without any warrant or written direction served for that purpose. The provisions of that order of course only apply when the party attends the Master in person or by solicitor and has notice of the direction.

The only order which the Master is precluded from making in suits for administration, or partition, in which he has issued a decree, is that for the payment out of the money in Court; as to the distribution of the fund, it would seem to be intended that the Master should state the amount of the commission and what he finds would be a proper apportionment thereof among the different solicitors under *Order 643*, and also the amounts he finds payable to creditors, and other beneficiaries, respectively.

The order for payment is to be made by a Judge or the Court. Application for this order is to be made in Chambers on a Monday (*Order 590*): the application is to be made upon notice, and it would seem that all persons who, under the former practice, would be entitled to notice of a hearing on further directions, would be entitled to notice of such an application.

Under the ordinary administration decree, it has been held that the Master may take an account of timber cut with which a defendant is chargeable (*Stewart v. Fletcher, 18 Gr., 21*) and may also without any special directions take evidence and report the facts as to payments made by executors for the maintenence and education of infant beneficiaries (*Stewart v. Fletcher, 16 Gr., 235*). The Master would have similar powers under a decree issued by himself, he would also be entitled to make all proper allowances to executors, administrators, and trustees, by way of compensation for their services.

Where a legacy is given to executors as compensation for their trouble, they are at liberty to claim a further sum under the statute if the legacy be an insufficient remuneration (*Denison v. Denison, 17 Gr., 307*). Where a suit was brought by an executor unnecessarily the Court refused to allow him any commission (*Graham v. Robson, 17 Gr., 318*). An executor, not being a trustee of the realty, is not entitled to receive the rents thereof, and if he do, he is a mere intermeddler and not entitled to any compensation in respect of such rents (*Dagg v. Dagg, 25 Gr., 542*).

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640. Any adult person who has, heretofore, been entitled to a decree or order for the partition of an estate, may, on serving one or more of the persons entitled to a share of the estate of which partition is sought, with a 14 days' notice of motion, apply to the presiding Judge in Chambers, or to the Master in the County (other than the County of York) wherein the land sought to be affected by the proceeding lies, for an order for the partition or sale of the premises in question; whereupon such Judge or Master may make such order for partition or sale, or such other order as may be proper, and the Master shall thereupon proceed in the least expensive and most expeditious manner, according to the practice now in force, for the partition or sale of the premises, the ascertainment of the rights of the various persons interested, the adding parties, the taxation and payment of costs, and otherwise. Provided always, that where an infant is interested in the estate, no order shall be made for partition, or sale, until such infant is represented by its guardian *ad litem;* and provided also that all moneys realized from the estate shall at once be paid into Court, and that no moneys shall be distributed or paid out for costs or otherwise, without an order of the Judge in Chambers or the Court; and on the application for such order, the Judge may review, amend, or refer back to the Master his report or order, or make such other order as he deems proper.

This *Order* is also confined to the case of suits instituted by adult persons; where an infant institutes a suit for partition a bill must be filed. This order extends the principle of *Order 58* to partition suits; formerly it was necessary to make all tenants in common of the land in question parties to the bill; under this order it will suffice to notify one or more of such persons. Where the interests

are unequal the person having the largest interest should, as a general rule, be notified of the application.

Wherever an account is required from any person, such person should be made a defendant in the first instance, as it would seem doubtful whether parties served with the decree in the Master's office can be made to account thereunder *(Walker v. Seligmann, L. R. 12 Eq. 152)*.

The plaintiff was formerly bound to allege, and if disputed, to prove, his title, and under this order it will still be necessary that the affidavits in support of the application should establish the applicant's title, and it would also appear to be necessary to show thereby the estates and interests of all other persons interested as joint owners.

The Court will not decree partition of lands, for which no patent has issued, neither will it decree a sale of such lands at the instance of the representatives of a deceased locatee *(Abell v. Weir, 24 Gr., 464)*.

Where there is no Master resident in the County where the lands lie or where they are situate, in the County of York, or in more Counties than one, the application for partition should be made to a Judge in Chambers. The new jurisdiction, here conferred on a Judge in Chambers, cannot be exercised by the Referee in Chambers (*see Order 560*); the latter's powers are limited to those matters which on the 23rd of February, 1871, were done or transacted by a Judge sitting in Chambers.

Where two or more orders are made for partition of different parts of the same person's estate, the proceedings may be consolidated under *Order 641*.

By this *Order* the Master is empowered to make such a decree as the Court has heretofore been accustomed to make in partition suits,—except the order for payment of the money out of Court *(see note to Order 639)*. He would therefore appear to be entitled to make a decree under which an account of rents and profits could be taken, and under which a sum in gross could be allotted in lieu of dower, or curtesy, or any other life estate, and under which all other usual and necessary accounts and enquiries could be taken and made as the circumstances of each case may require. It seems

hardly necessary, for the decree to specify all the accounts and enquiries to be taken and made by the Master with the same detail as has been customary in decrees pronounced in open Court. The object of these orders is to lessen the expense of litigation, and if a shorter form of decree can be devised that will embrace all that was included in the form of decree heretofore pronounced in Court, it would seem desirable that it should be adopted. The form given in the appendix has been framed with that view.

All parties interested in the land who are not served with the notice of motion for the decree, will have to be served with an office copy of the decree (*Order 244*).

641. When after an order has been made under Order 640, lands are discovered in another County, an application may be made to a Judge in Chambers for the partition or sale of such lands under the order formerly made, and where two or more orders have been made by Masters in different Counties, an application may be made in Chambers for an order as to the conduct of the future proceedings.

The object of this order is to prevent more than one suit being brought in respect of the same estate. Where more than one suit is brought, under this *Order* application may be made to consolidate them.

642. There shall be an appeal to the presiding Judge in Chambers—on any day that he may sit in Chambers—against any decree, order, report, ruling or other determination of any Master; the notice of such appeal shall be a seven days' notice, and shall set out the grounds of objection, and the appeal shall be set down for argument not later than the Saturday preceding the day on which it is to be argued, and shall be brought on for argument within a month—not including vacation—of the making of such decree, order, report, ruling or determination, or

within such further time as a Judge may think proper, and the presiding Judge may then hear, or adjourn into Court, or otherwise dispose of such matters on such terms as he thinks proper.

This order works an important change in the practice. All appeals from Master's reports are now to be brought on in the first instance before a Judge in Chambers, who has power to adjourn any case he may think proper into Court.

Under *Order 252* a report became absolute without an order confirming the same at the expiration of fourteen days from the filing thereof, unless previously appealed from. Under *Order 642* the time for appealing is altered, and dates from the making and not the filing of the report. No report which requires confirmation, therefore, would now become absolute until a month had elapsed from its date, and if any proceedings were required to be taken thereunder before the expiration of the month, it would require a special order confirming it. An order for confirmation before the lapse of the month would as a general rule, only be made on consent of, or notice to, all parties interested therein and entitled to appeal therefrom.

Power is reserved to a Judge to extend the time for appealing under this *Order*, so as to meet the case of parties who are not notified of the order, report, etc., until after the time limited for appealing therefrom has expired, or so nearly expired as to prevent the party from prosecuting the appeal within the limited time.

This *Order* applies to all orders made by Masters, and supersedes therefore the provisions of *Order 591*, so far as it relates to appeals from orders made by Masters.

Instead of moving in Court to discharge a decree or order made by a Local Master, and which is served under *Orders 60* or *244*, the practice would now seem to be to appeal therefrom under this order. The notices required by schedules A and L to the *Con Orders* would, therefore, in such cases, require to be modified, but where a decree or order served under *Orders 60* or *244* is not made by a Local Master, the practice as to moving, to vary, or set it aside remains as formerly.

It will be observed that *Orders 638* and *640* empower the Local Masters to make an order for administration, or partition, or sale, but the power to make decrees in mortgage suits is given to the Deputy Registrars. This distinction must be carefully borne in mind, for although most of the Local Masters are also Deputy Registrars, yet some of them are not; it is also to be noted that it is only decrees or orders granted by Masters that are appealable under *Order 642*.

A motion to set aside a decree obtained on præcipe and for leave to answer, may be made in Chambers (*Kline v. Kline, 3 Ch. R. 79.*), or such a decree may be varied on petition, a rehearing in such cases being unnecessary. (*Nelles v. Vandyke, 17 Gr. 14; see also Simmers v. Erb, 21 Gr., 289.*)

643. In all suits hereafter instituted for administration, or partition, or administration and partition, unless otherwise ordered by the Court or a Judge, instead of the costs being allowed according to the tariff now in force, each person properly represented by a solicitor, and entitled to costs out of the estate—other than creditors not parties to the suit—shall be entitled to his actual disbursements in the suit, not including Counsel fees, and there shall be allowed for the other costs of the suit payable out of the estate, a commission on the amount realized, or on the value of the property partitioned, in the suit, which commission shall be apportioned amongst the persons entitled to costs, as the Judge or Master thinks proper. Such commission shall be as follows:—

On sums not exceeding $500, - - -	20	per cent.
for every additional $100 up to $1,500,	5	" "
for every additional $100 up to $4,000,	3	" "
for every additional $1,000 up to $10,000,	2½	" "
for every additional $1,000, - - -	1	" "

and such remuneration shall be in lieu of all fees, whether

between "party and party," "as between solicitor and client," or "between solicitor and client."

The commission payable under this order is divisible only between those who are strictly parties to the suit, properly represented by a solicitor, and entitled to costs out of the estate. Persons not originally made parties to the suit, but served with a copy of the decree under *Order 60*, are not thereby made parties to the suit, but are merely enabled to attend the proceedings, and are bound thereby as though they were actually parties *(English v. English, 12 Gr. 441)*. In a suit by a residuary legatee, the plaintiff sufficiently represents the other residuary legatees, and they are not entitled as of course to costs out of the estate occasioned by their appearing by another solicitor in the Master's office *(Gorham v. Gorham, 17 Gr., 386)*. Creditors who are neither plaintiffs nor defendants are also excluded from participation in the commission, their costs will be disposed of as formerly. The commission is to cover both the solicitor's fees and the fees to counsel. It is of course not intended to cover costs ordered to be paid by one party to another. It is intended to cover only costs payable out of the estate.

Where the principal part of the costs of a suit are ordered to be paid personally by one or more of the parties, and the costs of only a small proportion of the work done, are chargeable against the estate, it does not appear that in such a case the full amount of the commission here provided would be payable, and the power reserved to the Judge to make other order would probably be exerted. Cases might arise where from special circumstances the commission here provided would be clearly inadequate, and in such cases too it would be possible that the power to make other order as to the costs would be exercised.

644. When two or more suits are instituted for administration, or partition, or sale, the Judge may, in his discretion, disallow all, or any, of the costs of any suit or suits, which in his opinion has or have been unnecessarily prosecuted.

By *Order 308* the Master is directed not to allow a party on taxa-

tion any costs which do not appear to have been necessary or proper for the attainment of justice or for the defending his rights, or which appear to have been incurred through over-caution, negligence or mistake, or merely at the desire of the party; and under *Order 315* unnecessary costs occasioned by defendants severing in their defence are to be disallowed. Under the present order the whole costs of a suit may be disallowed if it have been commenced or prosecuted unnecessarily, and not only the costs of the plaintiff but those of defendants as well, the latter having power under *Order 641* to prevent the prosecution of more than one suit.

645. Order 434 shall apply to cases in which an adult is interested in the estate as well as an infant, and also to suits for redemption.

Order 434 was held to apply only to cases where all the defendants were infants. Where there were adult defendants, as well as infants, the *Order* was held not to apply, and such suits had consequently to be set down for hearing in Court (*Fullerton v. Keely, 9 C.L.J., 54*). The present *Order* is passed so as to enable such suits to be disposed of before the Referee in Chambers.

646. Order 435 shall apply to redemption suits: and under Orders 434 and 435 there may be granted, where it is prayed for, and notice is given in pursuance of Order 647, a decree embracing the additional relief which this Court is entitled, under "the Administration of Justice Act," to give, in mortgage cases, on the hearing of the cause *pro confesso*, and such a decree may be granted, notwithstanding that the defendant has been served by publication, or otherwise, or is a corporation; provided always that where the bill has not been personally served, the claim of the plaintiff shall be duly verified by affidavit.

By this *Order* the power of the Registrar to issue decrees on præcipe is extended to redemption suits, *Order 436* having previously restricted that power to suits for foreclosure or sale.

A question may arise whether an office copy of a bill for redemption should be specially endorsed. The endorsement referred to in *Order 436*, being applicable only to suits for foreclosure or sale, would of course be inappropriate on a redemption bill: it would seem that the short endorsement contained in the first part of Schedule C to the *Con. Orders* is all that is necessary in redemption suits.

Order 436, which requires proof of service of an office copy of the bill endorsed with the notice set forth in Schedule S being inconsistent with these *Orders*, would so far as redemption suits are concerned be abrogated by *Order 651*.

Under *Order 435* it was heretofore considered necessary, wherever the defendant was a corporation aggregate to require that an order should be obtained under *Order 16*, to take the bill *pro confesso* before a decree could be granted on præcipe, and wherever a defendant had been served by publication it was held the decree could not be made at all on præcipe. *(McMichael v. Thomas, 14 Gr. 249.)* Under *Order 646* the decree may be granted against a corporation aggregate without any order to take the bill *pro confesso*, being first obtained, and also against a defendant served by publication, but in the latter case there must be filed an affidavit verifying the plaintiff's claim. Where a defendant is served by publication in a mortgage suit, it would seem necessary that the notice required by Schedule C should be modified so as to conform to Schedule S and *Order 647 (see Order 436)*.

To obtain the additional relief referred to in this order, it must be prayed for in the bill, and the office copy of the bill served on the defendant must have been endorsed with the additional notice required by *Order 647*. Where an order for payment is required the bill should allege facts showing the personal liability of the defendant. The order for payment cannot be made unless the defendant have by covenant or otherwise made himself personally liable for the debt *(Christie v. Dowker, 10 Gr. 199, S. C. 10, U. C. L. J. 161)*. Where the defendant is merely the owner of the equity of redemption as assignee of the original mortgagor, and has entered into no covenant or agreement to pay the mortgage debt, an order for payment cannot properly be made against him, but where the original mortgagor is a party

and is legally bound to pay the debt, he may be ordered to pay it, notwithstanding that he may have conveyed away his equity of redemption to a co-defendant.

Where an order for delivery of possession is prayed the bill should show who is in possession, and also the plaintiff's right to have immediate possession.

647. In suits for foreclosure or sale, where the plaintiff prays for an order for the immediate delivery of possession, or for an order for immediate payment against a defendant, he must, in addition to the notice required by Schedule S, endorse upon the office copy of the bill served upon the defendant, the further notice:

(*Where order for immediate possession prayed.*)

"And the plaintiff will be entitled to an order for the immediate delivery of possession of the mortgaged premises to him."

(*Where order for immediate payment prayed.*)

"And the plaintiff will be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom the plaintiff is entitled to this relief*) to recover payment of the amount due by you."

648. Every Deputy-Registrar shall have the same power, as to the issue of decrees on *præcipe*, as by Order 646, and the Consolidated General Orders, is given to the Registrar of the Court.

Under *Order 38* the power of Deputy-Registrars to issue decrees in mortgage suits on præcipe was limited to suits for foreclosure, sale, or redemption, between the original mortgagee and mortgagor. *Order 648* removes this restriction, and extends the power of Deputy-Registrars to all cases brought for the foreclosure, sale, or redemption, of mortgaged property.

Although by this *Order* the Deputy-Registrars are given the same power to issue decrees as the Registrar, yet it would be inconvenient if they issued decrees in any cases except those in which the bill is filed with them, and it is probable the *Order* would be construed as having that implied limitation.

Under *Order 435* the Registrar has power to issue on præcipe any decree in mortgage cases that the Court would previously to that *Order* have made upon a hearing *pro confesso (Kirkpatrick v. Howell, 22 Gr., 94).*

The decree is drawn up upon præcipe upon proof of service of an office copy of the bill duly endorsed. *Order 436* provides for the production of an office copy of the bill, but where the application is made to the Deputy-Registrar with whom the bill is filed the production of an office copy ought to be dispensed with.

Where the defendant has been served by publication, proof of the plaintiff's claim must be adduced *(see Order 646).* In other cases no affidavit is required from the plaintiff proving his claim, but the account is to be taken on the basis of the special endorsement on the office copy bill served. Where, however, the plaintiff, as is sometimes the case, admits that he has endorsed his bill for more than is actually due, it should be stated in the decree that he abandons the excess claimed by the endorsement, and only the balance should be ordered to be paid.

649. Every decree or order hereafter made by the Court, whether the service of the bill, or other proceedings on the defendant, has been personal, by publication, or otherwise, shall be absolute in the first instance, unless the Court shall otherwise order.

This Order creates an important change in the practice: formerly a decree founded on an order *pro confesso*, in cases where the defendant had not been served personally, and had not appeared at the hearing, was merely a decree *nisi* and required to be made absolute under *Order 114 et seq.* Under *Order 649* all decrees are to be absolute in the first instance, unless the Court otherwise order.

Where the decree is granted on præcipe against a defendant who

has not been personally served with the bill, the plaintiff's claim is required to be verified by affidavit (*Order 646*); and it would seem probable that the same rule would be followed in causes heard in Court.

650. The Local Masters and Deputy-Registrars shall enter in a book or books, kept for that purpose, all decrees, or orders, made by them, and they shall, on the conclusion of every suit, or matter, annex together all the pleadings and papers, filed with them in such suit, or matter, and transmit the same to the Clerk of Records and Writs, who shall duly enter and file the same.

651. All Orders and portions of Orders, inconsistent with these Orders are hereby abrogated.

APPENDIX.

FORMS OF PROCEEDINGS UNDER THE FOREGOING ORDERS.

The following forms are not to be understood as having in any way received the sanction of the Court. They have been framed with a view to meet the changes in the practice consequent upon the foregoing *Orders*, and have no authority—except so far as they may successfully carry out that idea.

No. 1.—*Form of Bill by a legal or equitable mortgagee, or person entitled to a lien as a security for a debt, seeking foreclosure, or sale, or otherwise to enforce his security.*

In Chancery.

Between—A. B. ....Plaintiff.

and

C. D .....Defendant.

City of Toronto.

To the Honourable the Judges of the Court of Chancery,

The Bill of Complaint of A. B., of the City of Toronto, in the County of York, Merchant ;

Sheweth as follows :

1. Under and by virtue of an Indenture (*or other document*), dated, &c., and made, &c. (and a transfer thereof, made by indenture, dated, *&c.*, and made, *&c.*), the plaintiff is a mortgagee (*or*, an equitable mortgagee) of (*Or*, is entitled to hold a lien upon) certain freehold property (*Or*, leasehold, *or other property, as the case may be*) therein comprised, being (*insert a general description of the property*), for securing the sum of $ and interest, which the defendant by the said Indenture covenanted to pay to [your complainant *or* the said A. B. and to the benefit of which covenant, your complainant is now entitled as assignee of the said A. B.]

2. The time for payment has elapsed, and no sum has been paid on account of principal or interest (*or* $ has been paid on account of principal, and $ on account of interest).

3. There is now due under and by virtue of the said Indenture of mortgage, for principal money the sum of $, and for interest the sum of $.

4. The plaintiff has not been in occupation of the said mortgaged premises, or of any part thereof, (*Or*, the plaintiff has been in the occupation of the premises, or of some part thereof, from the day of in the year to the day of in the year).

5. The defendant, C. D., is entitled to the equity of redemption in the said lands (*Or*, the premises subject to such lien).

6. The defendant, C. D., is in possession of the said lands, and the plaintiff claims to be entitled to the possession thereof by reason of the default in payment aforesaid.

The plaintiff therefore prays :

(*Where a personal order for payment is sought.*)

1. That the defendant may be ordered to pay the said sum of $ and interest thereon and the costs of this suit to your complainant forthwith.

(*Where an order for the delivery of possession is sought.*)

2. That the defendant, C. D., may be ordered forthwith to deliver up to your complainant possession of the said mortgaged premises.

3. That a time may be appointed according to the practice of this Honourable Court, for the defendant, C. D., to redeem your complainant, and [in default thereof, that the equity of redemption in the said lands may be foreclosed. *Or*, in default thereof that the said mortgaged premises may be sold and the produce thereof applied in or towards payment of the said debt and costs. *Where there is no prayer for immediate payment and the defendant is personally liable, add*, and that the defendant, C. D., may be ordered to pay the balance of the said mortgage debt and costs after deducting the amount realized by such sale.]

4. That for the purposes aforesaid all proper directions may be given and accounts taken.

5. That the plaintiff may have such further or other relief as the nature of the case may require.

And the plaintiff will ever pray.

No. 2.—*Endorsement on office copy of Bill of Complaint in suits for foreclosure or sale.*

Notice to the defendant within named.

Your answer is to be filed at the office of the at in the of in the County of

You are to answer or demur within weeks from the service hereof.

If you fail to answer or demur within the time above limited, or, if you answer admitting the execution of the mortgage and other facts stated in the Bill as entitling the plaintiff to a decree you are subject to have a decree or order made against you forthwith thereafter; and if this notice is served upon you personally, you will not be entitled to any further notice of the future proceedings in this cause.

NOTE.—*This Bill is filed by solicitor for the above-named plaintiff.*

AND TAKE NOTICE, that the plaintiff claim that there is now due by you for principal money and interest the sum of and that you are liable to be charged with this sum, with subsequent interest and costs, in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, your interest in the property may be foreclosed (*or* sold)* unless before the time allowed you as by this notice for answering you file in the Office above-named a memorandum in writing signed by yourself or your solicitor to the following effect:—" dispute the amount claimed by the plaintiff in this cause," in which case you will be notified of the time fixed for settling the amount due by you at least four days before

* The endorsement should agree with the prayer of the bill. When the bill prayed for sale only, and for payment of the deficiency, and the endorsement on the office copy served, was for foreclosure; it was held a decree could not be granted on *præcipe*. (per Mowat, V. C. Hudspeth *v* Moffatt.)

the time to be so fixed. [*Where order for immediate possession prayed*] and the plaintiff will be entitled to an order for the immediate delivery of possession of the mortgaged premises to him.

[*Where order for immediate payment prayed*] and the plaintiff will be entitled forthwith to execution against the goods and lands of you (*naming the defendant against whom the plaintiff is entitled to this relief*) to recover payment of the amount due by you.]

[*If the Bill prays for a foreclosure, add,* If you desire a sale of the mortgaged premises instead of a foreclosure, you must within the time allowed you to answer file in the Office above-named a note or memorandum in writing signed by yourself or your solicitor to the following effect :—" desire a sale of the mortgaged premises in the plaintiff's Bill mentioned, or a competent part thereof, instead of a foreclosure," and deposit the sum of $80 to meet the expenses of such sale.]

No. 3.—*Notice in case of an absconding defendant in a mortgage suit against whom the plaintiff wishes to obtain a decree on præcipe.*

To the order directing publication the following notice should be added :—

C. D.,

Take notice that if you do not answer or demur to the bill pursuant to the above order, or if you answer admitting the execution of the mortgage and other facts stated in the bill as entitling the plaintiff to a decree, you are subject to have a decree or order made against you forthwith thereafter. Your answer is to be filed at the office of the [Clerk of Records and Writs at Osgoode Hall in the City of Toronto, *or*, Deputy-Registrar at the of].

And take notice that the plaintiff claims that there is now due by you for principal money and interest the sum of $ and that you are liable to be charged with this sum with subsequent interest and costs in and by the decree to be drawn up ; and that in default of payment thereof within six calendar months from the time of drawing up the decree your interest in the property may be sold (*or* foreclosed*) unless before the time allowed you as by this notice for answering you file in the office above-named a memo-

*The endorsement must specify whether the plaintiff desires a foreclosure or a sale, it must not be in the alternative (*Order* 436).

randum in writing signed by yourself or your solicitor to the following effect: "*I dispute the amount claimed by the plaintiff in this cause,*" in which case you will be notified of the time fixed for settling the amount due by you at least four days before the time to be so fixed; [*where order for immediate possession prayed* and the plaintiff will be entitled to an order for the immediate delivery of possession of the mortgaged premises to him.]

[*Where order for immediate payment prayed against the absconding defendant* and the plaintiff will be entitled forthwith to execution against the goods and lands of you, C. D., to recover payment of the amount due by you.]

[*Where the Bill is for foreclosure, add:* If you desire a sale of the mortgaged premises instead of a foreclosure, you must, within the time allowed you to answer, file in the office above-named a note or memorandum in writing, signed by yourself or your solicitor, to the following effect: "I desire a sale of the mortgaged premises in the plaintiff's bill mentioned, or a competent part thereof instead of a foreclosure;" and deposit the sum of $80 to meet the expenses of such sale.] A. B., plaintiff's solicitor.

No. 4.—*Endorsement on office copy of a decree served under Order 60, where the decree has been issued by a Local Master.*

To the within named A. B.,

Take notice, that from the time of the service hereof, you, (*or, as the case may be, the infant, or person of unsound mind*) will be bound by the proceedings in this cause in the same manner as if you (*or, the said infant, or person of unsound mind*) had been originally made a party to the suit: and that you (*or, the said infant, or person of unsound mind*) may, upon service of notice upon the plaintiff, attend the proceedings under the within decree: and that you (*or, the said infant, or person of unsound mind*) may, within one month from the date thereof, or within such further time as a Judge of the said Court may allow you, appeal to the presiding Judge in Chambers from the said decree.

A. B.,
of the City of Toronto,
in the County of York,
Plaintiff's Solicitor.

No. 5.—*Endorsement on office copy Decree, for service under Order 244, where the Decree has been pronounced in Court.*

To A. B. (*the person upon whom service has been directed*),

(*Set out the Order.*)

If you wish to apply to discharge the foregoing order, you must do so within one month from the date, or within such time as a Judge of the said Court may allow you for that purpose, and if you wish to add to, vary, or set aside, the decree, you must do so within fourteen days from the service hereof; (*Where the Order fixes a time for the further proceedings, add*) and if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence as may seem just and expedient; and you will be bound by the decree and the further proceedings in the cause, in the same manner as if you had been originally made a party to the suit, without any further notice.

No. 6.—*Endorsement on office copy Decree, for service under Order 244, where the Decree has been issued by a local Master.*

To A. B. (*the person upon whom service has been directed.*)

(*Set out order directing service.*)

If you wish to apply to discharge the foregoing order, or to add to, vary, or set aside the decree, you must do so within one month from the respective dates thereof, or within such further time as a Judge of the said Court may allow you for the purpose. (*When the the Order fixes a time for further proceedings, add*) and if you fail to attend at the time and place appointed, either in person or by your solicitor, such order will be made and proceedings taken in your absence as may seem just and expedient; and you will be bound by the decree and the further proceedings in the cause, in the same manner as if you had been originally made a party to the suit, without any further notice.

No. 7.—*Form of Decree for sale with reference as to encumbrancers, and orders for payment, and delivery of possession.*

IN CHANCERY.

the day of

in the year of our Lord 18

BETWEEN

(*Full style of cause.*)

1. WHEREAS the above named Plaintiff , filed Bill in this

Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said Defendant , as by
of service now produced appears, with an office copy of the said Bill, on which was indorsed the notice required by the General Orders of this Court in that behalf whereby the Defendant w informed amongst other things, that the Plaintiff claimed that there was then due by the Defendant for principal money and interest, the sum of
and that the Defendant w liable to be charged with that sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof, within six calendar months from the time of drawing up the decree, interest in the property might be sold, and no answer or demurrer or note disputing such claim of the Plaintiff having been filed by the said Defendant within the time limited for that purpose by the said notice, as by the [books in the office of the Deputy-Registrar of this Court at] appears.

2. IT IS THEREUPON ORDERED AND DECREED that all necessary enquiries be made, accounts taken, costs taxed, and proceedings had for redemption or sale, and that for these purposes the cause be referred to the Master of this Court at
and in the event of a sale the same is to be by public auction, private contract or tender, as to the said Master shall seem best.

3. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith after the making of the Master's report pay to the Plaintiff what shall be found due to him for principal money, interest and costs at the date of the said report, and upon payment of the amount due to him, before the sale hereinbefore directed shall have taken place that the Plaintiff do assign and convey the mortgaged premises free and clear of all encumbrances done by him, and deliver up all deeds and writings in his custody or power relating thereto upon oath to the Defendant or to whom he may appoint.

4. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith deliver to the Plaintiff, or to whom he may appoint, possession of the lands and premises in question, in this

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and writings in his
the Defendant or

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or to whom he may
in question, in this

cause or of such part thereof as the said Defendant may be in possession of.

No. 8.—*Form of Decree for foreclosure, with reference as to encumbrances, and orders for payment and delivery of possession.*

(Formal parts as in No. 7.)

1. WHEREAS the above named Plaintiff , filed Bill in this Court for the payment and satisfaction of the mortgage securit in the said Bill mentioned, and thereupon served the said Defendant , as by
of service now produced appears, with an office copy of the said Bill, on which was indorsed the notice required by the General Orders of this Court in that behalf; whereby the Defendant w informed, amongst other things, that the Plaintiff claimed that there was then due by the Defendant for principal money and interest, the sum of
and that the Defendant w liable to be charged with that sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof, within six calendar months from the time of drawing up the decree, interest in the property might be foreclosed, and no answer or demurrer or note disputing such claim of the Plaintiff having been filed by the said Defendant within the time limited for that purpose by the said notice, as by the [books in the office of the Deputy-Registrar of this Court at] appears.

2. IT IS THEREUPON ORDERED AND DECREED that all necessary enquiries be made, accounts taken, costs taxed, and proceedings had for redemption or foreclosure, and that for these purposes the cause be referred to the Master of this Court at

3. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith, after the making of the Master's report, pay to the Plaintiff what shall be found due to him for principal, interest and costs at the date of the said report, and upon payment thereof that the Plaintiff do assign and convey the mortgaged premises free and clear of all encumbrances done by him and deliver up all deeds and writings in his custody or power relating thereto, upon oath, to the said Defendant or to whom he may appoint.

4. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith deliver to the Plaintiff, or to whom he may appoint, possession of the lands and premises in question in this cause or of such part thereof as the said Defendant may be in possession of.

No. 9.—*Form of Decree for foreclosure, account taken by Registrar, with order for payment, and delivery of possession.*

(Formal parts as in No. 7.)

1. WHEREAS the above-named Plaintiff filed Bill in this Court for the payment and satisfaction of the Mortgage securit in the said Bill mentioned, and thereupon served the said Defendant , as by of service now produced appears, with an office copy of the said Bill, on which was indorsed the notice required by the General Orders of the Court in that behalf, whereby the Defendant informed, amongst other things, that the Plaintiff claimed that there was then due by Defendant for principal money and interest, the sum of
and that the Defendant w liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, interest in the property might be foreclosed, and no answer or demurrer or note disputing such claim of Plaintiff having been filed by the said Defendant within the time limited for that purpose by the said notice, as by the [books in the office of the Deputy-Registrar of this Court at] appears.

2. AND this Court having caused an account of subsequent interest to be taken at the rate of *per centum per annum* on the sum of principal money secured by the Indenture of Mortgage in the said Bill mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned, doth find the same amount to
and having caused the costs of the Plaintiff to be taxed, doth find the same amount to which

said subsequent interest and costs being added to the sum of so claimed by the notice indorsed on the copy of the Bill so served on the Defendant make together the sum of

3. AND upon the said Defendant paying the said sum of into the Bank at the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint credit of the Plaintiff and the Referee in Chambers of this Court *[or in case the Plaintiff shall recover the amount due to him under the order for payment hereinafter contained], IT IS ORDERED AND DECREED that the said Plaintiff do assign and convey the said premises free and clear of all incumbrances done by and deliver up all deeds and writings in custody or power relating thereto upon oath to the said Defendant or to whom he may appoint.

4. BUT in default of the said Defendant making such payment by the time aforesaid, IT IS ORDERED AND DECREED that the said Defendant do stand absolutely debarred and foreclosed, of and from all equity of redemption in and to the said premises.

5. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith pay to the said Plaintiff the sum of being the amount due to the Plaintiff at the date hereof for principal, money, interest and costs.

6. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith deliver to the Plaintiff , or to whom he may appoint, possession of the lands and premises in question in this cause, or such part thereof as the said Defendant may be in possession of.

No. 10.—*Form of Decree for sale, account taken by the Registrar, with order for payment and delivery of possession.*

(Formal parts as in No. 7.)

1. WHEREAS the above-named Plaintiff filed Bill in this Court for the payment and satisfaction of the Mortgage securit

*Where order for payment granted insert the words between brackets.

in the said Bill mentioned, and thereupon served the said Defendant , as by of service now produced appears, with an office copy of the said Bill, on which was endorsed the notice required by the General Orders of this Court in that behalf, whereby the Defendant informed, amongst other things, that the Plaintiff claimed that there was then due by the Defendant for principal money and interest, the sum of
and that the Defendant w liable to be charged with this sum, with subsequent interest and costs in and by the decree to be drawn up, and that in default of payment thereof within six calendar months from the time of drawing up the decree, interest in the property might be sold, and no answer or demurrer or note disputing such claim of Plaintiff having been filed by the said Defendant within the time limited for that purpose by the said notice, by [the books in the office of the Deputy Registrar of this Court at] appears ;

2. AND this Court having caused an account of subsequent interest to be taken at the rate of per centum per annum on the sum of
principal money secured by the Indenture of Mortgage in the said Bill mentioned, up to the day of next, being the time appointed for payment as hereinafter mentioned, doth find the same amount to
and having caused the costs of the Plaintiff to be taxed, doth find the same amount to which
said subsequent interest and costs being added to the sum of so
claimed by the notice endorsed on the copy of the Bill so served on the Defendant , make together the sum of

3. AND upon the said Defendant paying the said sum of into the Bank at the between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the day of next, to the joint

credit of the Plaintiff and the Referee in Chambers of this Court *[or in case the Plaintiff shall, before the sale hereinafter directed shall have taken place, recover the amount due to him under the order for payment hereinafter contained], IT IS ORDERED AND DECREED that the said Plaintiff do assign and convey the said premises free and clear of all incumbrances done by and deliver up all deeds and writings in custody or power relating thereto upon oath to the said Defendant or to whom he may appoint,

4. BUT in default of the said Defendant making such payment by the time aforesaid, IT IS ORDERED AND DECREED that the said premises be sold, either by public auction, tender or private contract, with the approbation of the Master of this Court at , who is to settle the conveyances to the purchasers, in case the parties differ about the same ;

5. AND IT IS ORDERED AND DECREED that the purchasers do pay their purchase money into the Court, to the credit of this cause, and that the same when so paid in, be applied in payment of what has been found due to the said Plaintiff together with subsequent interest and subsequent costs, to be computed and taxed by the said Master, and that the balance [be paid to the said Defendant, *or* do abide the further order of this Court].

6. IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith pay to the Plaintiff the sum of being the amount due to the Plaintiff at the date hereof for principal money, interest and costs.

7. AND IT IS FURTHER ORDERED AND DECREED that the Defendant do forthwith deliver to the Plaintiff , or to whom he may appoint, possession of the lands and premises in question in this cause or of such part thereof as the said Defendant may be in possession of.

*Where order for payment granted insert the words between brackets.

No. 11.—*Form of Decree for Redemption.*

(*Formal parts as in No. 7.*)

1. WHEREAS the above-named plaintiff filed his bill in this

Court for the redemption of the mortgaged premises in the said bill mentioned and thereupon served the said defendant as by of service now produced appears with an office copy of the said bill, on which was indorsed the notice required by the General Orders of this Court in that behalf, whereby the defendant was informed amongst other things that if he failed to answer or demur within the time therein limited he was subject to have such decree or order made against him as the Court might think just upon the plaintiff's own showing; and no answer or demurrer having been filed by the said defendant within the limited time for that purpose by the said notice as by the (books in the office of the Deputy Registrar of this Court at) appears.

2. IT IS THEREFORE ORDERED AND DECREED that the Master of this Court at do take an account of what, if anything, is due from the plaintiff to the defendant, or from the defendant to the plaintiff in respect of the said mortgaged premises, and do tax to the party in whose favour the balance shall be found, his costs of this suit.

3. IT IS FURTHER ORDERED AND DECREED that upon the plaintiff paying to the defendant what, if anything, shall be found due to him for principal, interest, and costs, within six months after the said master shall have made his report, at such time and place as the said master shall appoint, or in case nothing shall be found due to the defendant then forthwith after the confirmation of the said master's report, that the defendant do reconvey the said mortgaged premises free and clear of all encumbrances done by him, and deliver up on oath all deeds and documents in his custody or power relating thereto to the plaintiff or to whom he shall appoint.

4. IT IS FURTHER ORDERED AND DECREED that in case the plaintiff shall make default in payment as aforesaid, of what, if anything, may be found due to the defendant, that the plaintiff's bill do stand dismissed out of this Court, with costs to be paid by the plaintiff to the defendant forthwith after taxation thereof.

5. IT IS FURTHER ORDERED AND DECREED that in case nothing shall be found due from the plaintiff to the defendant, that the defendant do pay the plaintiff his costs of this suit forthwith after taxation thereof, and in case any balance shall be found

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due from the defendant to the plaintiff that the defendant do pay such balance to the plaintiff forthwith after the confirmation of the Master's report.

No. 12.—*Form of Decree for administration made by a Local Master under Order 638.*

(Formal parts as in No. 7.)

1. Upon the application of the above-named Plaintiff in the presence of the solicitor for the Defendant [*or* no one appearing for the Defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant *or* all parties].

2. IT IS ORDERED AND DECREED that all necessary enquiries be made, accounts taken, costs taxed and proceedings had for the administration and final winding up of the personal [and real] estate of and for the adjustment of the rights of all parties interested therein, and that for these purposes the cause be referred to the Master of this Court at

3. IT IS FURTHER ORDERED AND DECREED that all balances which may be found due from the Plaintiff or Defendant [or any or either of them] to the said estate be, forthwith after the same shall have been ascertained by the said Master, paid into Court to the credit of this cause, subject to the further order of this Court.

4. IT IS FURTHER ORDERED AND DECREED that such personal [and real] estate or such parts thereof as the said Master may direct, be sold by public auction, private contract, or tender as the said Master may direct, and that the purchasers do pay their purchase money into Court to the credit of this cause subject to the further order of this Court.

5. IT IS FURTHER ORDERED AND DECREED that the Master do settle the conveyances, in case the parties differ or in case any persons who are not *sui juris* be interested therein, in which all proper parties are to join as the said Master may direct, and that the Deputy-Registrar of this Court at
do execute such conveyances for any infant parties who by reason of their tender years are unable to execute the same.

No. 13.—*Form of Decree for partition or sale made by a Judge in Chambers, or a Local Master, under Order 639.*

(Formal parts as in No. 7.)

1. Upon the application of the above-named Plaintiff in the presence of the solicitor for the Defendant [*or* no one appearing for the Defendant although duly notified as by affidavit filed appears] and upon hearing read the affidavits and papers filed, and what was alleged by the solicitor for [the applicant *or* all parties].

2. IT IS ORDERED AND DECREED that all necessary enquiries be made, accounts taken, costs taxed and proceedings had for the partition or sale of the lands and premises in the said affidavits mentioned, and for the adjustment of the rights of all parties interested therein, or for a partition of part and sale of the remainder of the said lands as may be most for the interest of the parties entitled to share therein, and that for these purposes the cause be referred to the Master of this Court at

3. AND IT IS FURTHER ORDERED AND DECREED that the said lands, or such part thereof as the said Master shall think fit, be sold by public auction, tender, or private contract, with the approbation of the said Master, freed from the claims of such of the Incumbrancers thereon (if any) whose claims were created by parties entitled to the said lands before the death of the said Testator [*Or*, Intestate] as shall have consented to such sale, and subject to the claims of such of them as shall not have consented, [and freed also from the dower of] and that the said Master do settle all conveyances that may be necessary in execution of this decree (in case the parties differ about the same, or in case there shall be any infants or other persons who are not *sui juris* interested therein,) and that all necessary parties do join therein, as the said Master shall direct, and that the Deputy-Registrar of this Court at do execute the conveyances on behalf of such of the infant parties as by reason of their tender years, are unable to execute the same, and that the purchasers do pay their purchase money into Court to the credit of this cause, subject to further order.

4. AND IT IS FURTHER ORDERED AND DECREED that in the event of partition of the whole of the said land, or in the

event of a partition of a part and the proceeds of the sale of the remainder being insufficient to pay the costs in full, that the costs, or so much thereof as remain unpaid, be borne and paid by the said Parties according to their shares and interests in the said lands *[and that the proportion of the said costs payable by the infant parties respectively be and the same is hereby declared to be, a lien on their respective shares, and that the Plaintiff do pay the Guardian of the infant Defendants his costs of this suit and that the same be added to his own costs].

*If there be any infant parties interested in the estate add the words in brackets.

NOTE.—Orders for administration, and partition, which under the foregoing Orders, the Local Masters are empowered to issue, are decretal Orders, and as such are to be stamped with the fee of $1, required by *R. S. O., Chap. 40, S. 105*; the same fee is also required to be paid on decrees issued on *præcipe* by Deputy-Registrars.

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